

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-128
Hawaii Administrative Rules
October 14, 1997

SUMMARY

1. §§3-128-1 to 3-128-3 are amended.
2. §3-128-8 is amended.
3. Chapter 128 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 128

GOVERNMENTAL RELATIONS AND COOPERATIVE PURCHASING

§3-128-1	Definitions
§3-128-2	Cooperative purchasing subject to chapter 103D, HRS
§3-128-3	Cooperative purchasing agreements between public procurement units
§3-128-4	Public notice for cooperative purchasing agreements between public procurement units and external procurement activities
§3-128-5	Cooperative purchasing agreements between public procurement units and nonprofit private procurement units
§3-128-6	Supply of personnel, information, and technical services
§3-128-7	Procurement of goods produced or services performed by governmental institutions
§3-128-8	Compliance with federal requirement

§3-128-1 Definitions. As used in this chapter, unless the context requires otherwise:

"Cooperative purchasing" means procurement conducted by a public or external procurement unit with one or more public procurement units, external procurement units, or nonprofit private procurement units, pursuant to this chapter.

"External procurement unit" means any buying organization not located in this State which, if located in this State, would qualify as a public procurement unit. An agency of the United States is an external procurement unit.

"Local public procurement unit" means any county of the State, or public agency of any county, public

authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of goods, services, and construction.

"Nonprofit private procurement unit" means a health or human services organization that provides services to the public and receives public funds for the procurement of goods, services, and construction through cooperative purchasing agreements with a public procurement unit.

"Public procurement unit" means either a local public procurement unit or a state public procurement unit.

"State public procurement unit" means the office of a chief procurement officer or a head of a purchasing agency of this State. [Eff 12/15/95; am and comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-801)

§3-128-2 Cooperative purchasing subject to chapter 103D, HRS. Procurement by cooperative purchasing agreements between public procurement units shall be done in compliance with the requirements of chapter 103D, HRS, and title 3, subtitle 11, HAR, except when the cooperative agreement is initiated by an external procurement activity. [Eff 12/15/95; am and comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-802)

§3-128-3 Cooperative purchasing agreements between public procurement units. Any cooperative purchasing agreement between public, external and nonprofit private procurement units for requirements or open-ended purposes, where the exact amount of goods or services to be obtained cannot be determined with certainty at the outset, shall provide that:

- (1) A public procurement unit shall be designated as lead agency for the procurement.
- (2) The requirements for any good or service shall be obtained by the participating public procurement units through the placement of purchase orders in accordance with the terms and conditions of the agreement;
- (3) Payment for any goods or services obtained through purchase order shall be the exclusive responsibility of the public procurement unit

- which placed the order;
- (4) Inspection and acceptance of any goods or services obtained through purchase order shall be the exclusive obligation of the public procurement unit which placed the order;
 - (5) The lead agency for the procurement may terminate the cooperative agreement with a public procurement unit for failure of that unit to comply with the terms of the contract.
 - (6) The exercise of any warranty rights attached to any good or service obtained through a purchase order shall be the exclusive right of the public procurement unit which placed the order; and
 - (7) Failure of a public, external, or nonprofit private procurement unit which is procuring goods and services from a cooperative agreement contract to secure performance from the contractor pursuant to its terms and conditions, may not necessarily preclude the remaining procurement units from obtaining goods and services from the cooperative agreement contract. [Eff 12/15/95; am and comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §§103D-802, 103D-803)

§3-128-4 Public notice of cooperative purchasing agreements between public procurement units and external procurement activities. The public procurement unit shall place a notice of the solicitation within the State pursuant to section 3-122-24. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §§103D-802, 103D-803)

§3-128-5 Cooperative purchasing agreements between public procurement units and nonprofit private procurement units. (a) A public procurement unit may enter into a cooperative purchasing agreement with a nonprofit private procurement unit if:

- (1) The nonprofit private procurement unit is under a purchase of services contract with the State, pursuant to chapter 42D, HRS;
- (2) The nonprofit private procurement unit submits an application to enter into a

cooperative purchasing agreement with a public procurement unit and receives approval from the chief procurement officer. A form shall be developed by the chief procurement officer for this purpose;

(3) Participation is limited to purchases from requirements contracts pursuant to section 3-121-6(c); and

(4) The chief procurement officer approves the cooperative purchasing agreement.

(b) The chief procurement officer may charge a nominal fee for participation by a nonprofit organization. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-802)

§3-128-6 Supply of personnel information and technical services. Requests to one public procurement unit by another public procurement unit, or an external procurement activity to provide or make available personnel, services, information, or technical services pursuant to section 103D-806, HRS, shall be complied with only to the extent that the chief procurement officer determines that it is practicable to do so. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-806)

§3-128-7 Procurement of goods produced or services performed by governmental institutions. Goods produced or services by programs such as Ho'opono workshop, correctional industries, or other governmental institutions may be obtained through cooperative purchasing agreements. The agreements made with other governmental agencies may be done without public solicitation. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-803)

§3-128-8 Compliance with federal requirement. Any procurement which involves the expenditure of federal assistance or contract monies shall comply with applicable federal law and regulations. [Eff 12/15/95; am and comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-102)

Amendments to and compilation of chapter 128, title 3, Hawaii Administrative Rules, on the Summary Page dated October 14, 1997 were adopted on October 14, 1997 following a public hearing held on September 22, 1997 in Honolulu, Hawaii; and via video conference from Honolulu, Hawaii on September 23, 1997 to Hilo, Hawaii; Wailuku, Maui; and Lihue, Kauai; after public notice was given in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on August 22, 1997.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

ROBERT E. OYAMA
Chairperson
Procurement Policy Board

SAM CALLEJO
State Comptroller

APPROVED:

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General